

★ Roll Call Number

19-1939

Agenda Item Number

38

Date December 2, 2019

Page 1

**HOLD HEARING FOR APPROVAL OF DOCUMENTS FOR VACATION OF SEGMENTS OF TUTTLE STREET AND SOUTHWEST 12<sup>TH</sup> STREET RIGHT-OF-WAY AND CONVEYANCE OF A PERMANENT EASEMENT FOR SUBSURFACE BUILDING ENCROACHMENT AND A PERMANENT EASEMENT FOR AIR SPACE ABOVE CITY-OWNED PROPERTY TO FUSION APARTMENTS, LLC FOR \$6,650.00**

**WHEREAS**, on September 9, 2019, by Roll Call No. 19-1394, the City Council of the City of Des Moines, Iowa voted to receive and file a communication from the City Plan and Zoning Commission recommending approval of a request from HRC NFS I, LLC, representing Fusion Apartments, LLC, to vacate the air rights in portions of Tuttle Street right-of-way and Southwest 12<sup>th</sup> Street right-of-way, and to vacate subsurface rights in a portion of Tuttle Street right-of-way adjoining Lot 1 and Lot 12, Gray's Station Plat 2, Des Moines, Iowa (hereinafter "City Right-of-Way"), further described below, to allow for the permanent encroachment of balcony overhang elements and subsurface building footings into the City Right-of-Way for the Fusion East and Fusion West multiple family dwelling project; and

**WHEREAS**, Fusion Apartments, LLC, owner of the adjoining property, has offered to the City the purchase price of \$6,650.00 for the purchase of a Permanent Easement for Subsurface Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property in said City Right-of-Way, hereinafter more fully described, which represents \$5,510.00 for the Permanent Easement for Air Space Above City-owned Property, and \$ 1,140.00 for the Permanent Easement for Subsurface Building Encroachment, to allow for encroachment into the City Right-of-Way of balcony overhang elements and subsurface building footings, subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated, which price reflects the fair market value of the Permanent Easement for Subsurface Building Encroachment and Permanent Easement for Air Space Above City-Owned Property as determined by the City's Real Estate Division; and

**WHEREAS**, there is no public need or benefit for the right-of-way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation and the conveyance of the Permanent Easement for Subsurface Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property within said City Right-of-Way; and

**WHEREAS**, on November 18, 2019, by Roll Call No. 19-1825, it was duly resolved by the City Council of the City of Des Moines, Iowa, that said proposed vacation and conveyance be set down for hearing on December 2, 2019, at 5:00 p.m., in the Council Chamber; and

**WHEREAS**, due notice of the proposal to vacate said City Right-of-Way and convey a Permanent Easement for Subsurface Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property was given to all necessary parties as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with said notice, those interested in said proposed vacation and conveyance, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council of the City of Des Moines, Iowa.



**Roll Call Number**

19-1939

**Agenda Item Number**

38

**Date** December 2, 2019

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:

1. Upon due consideration of the facts and statements of interested persons, any and all objections to said proposed vacation and conveyance of the Permanent Easement for Subsurface Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property, as described below, are hereby overruled and the hearing is closed.
2. There is no public need or benefit for the City Right-of-Way proposed to be vacated, and the public would not be inconvenienced by reason of the vacation of portions of Tuttle Street right-of-way and Southwest 12<sup>th</sup> Street right-of-way adjoining Lot 1 and Lot 12, Gray's Station Plat 2, Des Moines, Iowa, more specifically described as follows, subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated:

A PART OF THE AIR RIGHTS IN THE SW 12TH STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 1, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 08°20'42" EAST ALONG THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 28.56 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 08°20'42" EAST ALONG SAID WESTERLY LINE, 53.00 FEET; THENCE SOUTH 81°39'18" WEST, 2.50 FEET; THENCE NORTH 08°20'42" WEST, 53.00 FEET; THENCE NORTH 81°39'18" EAST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 133 SQUARE FEET. APPROXIMATE GROUND ELEVATION IS 22.00 FEET AND 23.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 33.25 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 36.25 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

AND

A PART OF THE AIR RIGHTS IN THE RIGHT OF WAY OF TUTTLE STREET LYING NORTH OF AND ADJOINING LOT 1, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 81°39'18" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 24.29 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°20'42" WEST, 5.50 FEET; THENCE NORTH 81°39'18" EAST, 38.93 FEET; THENCE NORTH 81°39'24" EAST, 139.67 FEET; THENCE SOUTH 8°20'36" EAST, 5.50 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 81°39'24" WEST ALONG SAID NORTHERLY LINE, 139.67 FEET; THENCE SOUTH 81°39'18" WEST CONTINUING ALONG SAID NORTHERLY LINE, 38.93 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.02 ACRES (982 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 22.00 FEET AND 23.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 33.25 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 36.25 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

AND

Date December 2, 2019

A PART OF THE AIR RIGHTS IN THE RIGHT OF WAY OF TUTTLE STREET LYING NORTH OF AND ADJOINING LOT 12, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 12; THENCE NORTH 81°39'18" EAST ALONG THE NORTHERLY LINE OF SAID LOT 12, A DISTANCE OF 35.84 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°20'42" WEST, 2.00 FEET; THENCE NORTH 81°39'18" EAST, 157.85 FEET; THENCE SOUTH 08°20'42" EAST, 2.00 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 81°39'18" WEST ALONG SAID NORTHERLY LINE, 157.85 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (316 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 17.50 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 33.25 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 36.25 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

AND

A PART OF THE SUBSURFACE RIGHT OF WAY OF TUTTLE STREET LYING NORTH OF AND ADJOINING LOT 1, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 81°39'18" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 8.18 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°20'42" WEST, 1.00 FEET; THENCE NORTH 81°39'18" EAST, 55.04 FEET; THENCE NORTH 81°39'24" EAST, 152.31 FEET; THENCE SOUTH 08°20'38" EAST, 1.00 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 81°39'24" WEST ALONG SAID NORTHERLY LINE, 152.31 FEET; THENCE SOUTH 81°39'18" WEST CONTINUING ALONG SAID NORTHERLY LINE, 55.04 FEET TO THE POINT OF BEGINNING AND CONTAINING 207 SQUARE FEET.

- 3. That the conveyance of a Permanent Easement for Subsurface Building Encroachment and a Permanent Easement for Air Space Above City-Owned Property within said vacated Tuttle Street right-of-way and Southwest 12<sup>th</sup> Street right-of-way, as described below, subject to the reservation of any necessary easements for all existing utilities in place until such time that they are abandoned or are relocated, to Fusion Apartments, LLC, for \$6,650.00, together with payment by such grantee of the estimated publication and recording costs for this transaction, is hereby approved:

**Permanent Easement for Air Space**

**Fusion East – Easement ‘A’**

A PART OF THE VACATED AIR RIGHTS IN THE SW 12TH STREET RIGHT OF WAY LYING WEST OF AND ADJOINING LOT 1, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 08°20'42" EAST ALONG THE WESTERLY LINE OF SAID LOT 1, A DISTANCE OF 28.56 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 08°20'42" EAST ALONG SAID WESTERLY LINE, 53.00 FEET; THENCE SOUTH 81°39'18" WEST, 2.50 FEET; THENCE NORTH 08°20'42" WEST, 53.00 FEET; THENCE NORTH 81°39'18" EAST, 2.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 133 SQUARE FEET. APPROXIMATE GROUND ELEVATION IS 22.00 FEET AND 23.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING



Roll Call Number

19-1939

Agenda Item Number

38

Date December 2, 2019

APPROXIMATELY 33.25 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 36.25 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

AND

**Fusion East – Easement ‘B’**

A PART OF THE VACATED AIR RIGHTS IN THE RIGHT OF WAY OF TUTTLE STREET LYING NORTH OF AND ADJOINING LOT 1, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 81°39'18" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 24.29 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°20'42" WEST, 5.50 FEET; THENCE NORTH 81°39'18" EAST, 38.93 FEET; THENCE NORTH 81°39'24" EAST, 139.67 FEET; THENCE SOUTH 8°20'36" EAST, 5.50 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 81°39'24" WEST ALONG SAID NORTHERLY LINE, 139.67 FEET; THENCE SOUTH 81°39'18" WEST CONTINUING ALONG SAID NORTHERLY LINE, 38.93 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.02 ACRES (982 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 22.00 FEET AND 23.00 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 33.25 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 36.25 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

AND

**Fusion West – Easement ‘A’**

A PART OF THE VACATED AIR RIGHTS IN THE RIGHT OF WAY OF TUTTLE STREET LYING NORTH OF AND ADJOINING LOT 12, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 12; THENCE NORTH 81°39'18" EAST ALONG THE NORTHERLY LINE OF SAID LOT 12, A DISTANCE OF 35.84 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°20'42" WEST, 2.00 FEET; THENCE NORTH 81°39'18" EAST, 157.85 FEET; THENCE SOUTH 08°20'42" EAST, 2.00 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 81°39'18" WEST ALONG SAID NORTHERLY LINE, 157.85 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.01 ACRES (316 SQUARE FEET). APPROXIMATE GROUND ELEVATION IS 17.50 FEET WITH THE BOTTOM OF BALCONY ELEVATION BEING APPROXIMATELY 33.25 FEET AND THE TOP OF BALCONY ELEVATION BEING APPROXIMATELY 36.25 FEET. ELEVATIONS ARE CITY OF DES MOINES VERTICAL DATUM.

**Subsurface Building Encroachment Easement- Fusion East**

A PART OF THE VACATED SUBSURFACE RIGHT OF WAY OF TUTTLE STREET LYING NORTH OF AND ADJOINING LOT 1, GRAY'S STATION PLAT 2, AN OFFICIAL PLAT IN THE CITY OF DES MOINES, POLK COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 81°39'18" EAST ALONG THE NORTHERLY LINE OF SAID LOT 1, A DISTANCE OF 8.18 FEET TO THE POINT OF BEGINNING; THENCE NORTH 08°20'42" WEST, 1.00 FEET; THENCE NORTH 81°39'18" EAST, 55.04 FEET; THENCE NORTH 81°39'24" EAST, 152.31 FEET; THENCE SOUTH 08°20'38" EAST, 1.00 FEET TO SAID NORTHERLY LINE; THENCE SOUTH 81°39'24" WEST ALONG SAID NORTHERLY LINE,



Roll Call Number

19-1939

Agenda Item Number

38

Date December 2, 2019

152.31 FEET; THENCE SOUTH 81°39'18" WEST CONTINUING ALONG SAID NORTHERLY LINE, 55.04 FEET TO THE POINT OF BEGINNING AND CONTAINING 207 SQUARE FEET.

(VACATED BY ORDINANCE NO. 15,840, PASSED December 2, 2019);

- 4. The Mayor is authorized and directed to sign the Offer to Purchase, Permanent Easement for Subsurface Building Encroachment, and Permanent Easement for Air Space Above City-Owned Property for the conveyance identified above, and the City Clerk is authorized and directed to attest to the Mayor's signature.
5. Upon final passage of an ordinance vacating said City Right-of-Way and upon proof of payment of the consideration plus \$113.00 for publication and recording costs, the City Clerk is authorized and directed to forward the original of the Permanent Easement for Subsurface Building Encroachment and the Permanent Easement for Air Space Above City-Owned Property, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing, to the Real Estate Division of the Engineering Department for the purpose of causing said documents to be recorded.
6. The Real Estate Division Manager is authorized and directed to forward the original of the Easements, together with a certified copy of this resolution and of the affidavit of publication of notice of this hearing, to the Polk County Recorder's Office for the purpose of causing these documents to be recorded.
7. Upon receipt of the recorded documents back from the Polk County Recorder, the Real Estate Division Manager shall mail the original of the Easements and copies of the other documents to the grantee.
8. Non-project related land sale proceeds are used to support general operating budget expenses: Org - EG064090.

Moved by Mandelbaum to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland, Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL (7 yeas).

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Motion Carried 7-0 APPROVED M. Frank Cownie Mayor

P. Kay Cmelik City Clerk